

L A W O F F I C E S
2101 L Street NW • Washington, DC 20037-1526
Tel (202) 785-9700 • Fax (202) 887-0689
Writer's Direct Dial: (202) 828-2226
A5691.0584

August 4, 2004

EX PARTE COMMUNICATION

Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W., TW-A325
Washington, DC 20554

**Re: Response to MCI re AT&T's SBR compensation payment plan, Pay
 Telephone Reclassification and Compensation Provisions of the
 Telecommunications Act of 1996, CC Docket No. 96-128**

Dear Ms. Dortch:

Contrary to MCI's claim in *MCI's Alternative Payment Arrangements Ex Parte*,¹ the American Public Communications Council ("APCC") is not asking the Commission to codify AT&T's commercial agreements with switch-based resellers ("SBRs") or to dictate the terms of other carriers' agreements with SBRs. APCC's interest is in ensuring that the Commission's compensation *rule* protects payphone service providers' ("PSPs'") rights, regardless of the specifics of any agreements between carriers.² APCC has no interest in the terms of those agreements except to the extent that they undermine PSPs' rights to be fairly compensated for the use of their payphones.

APCC is simply asking the Commission to require that, when an Intermediate Carrier ("IC") voluntarily undertakes to perform all call tracking and compensation payment functions for a SBR, and the SBR is thereby exempted from compliance with the auditing requirement and other safeguards of the new rule, the IC must actually pay the compensation to PSPs. MCI tries to recast the issue as APCC's interference with MCI's commercial agreements with SBRs, but MCI is not merely seeking freedom to

¹ Letter to Marlene Dortch, Secretary, FCC, from Larry Fenster, Senior Economist, Law and Public Policy, MCI, July 29, 2004, at 1. ("*MCI's Alternative Payment Arrangements Ex Parte*"). MCI is responding to APCC's *AT&T SBR Compensation Payment Plan Ex Parte*. Letter to Marlene H. Dortch, Secretary, FCC, from Albert H. Kramer and Robert F. Aldrich, July 26, 2004 ("*APCC's AT&T SBR Compensation Payment Plan Ex Parte*").

² APCC has no knowledge of the terms of AT&T's agreements with SBRs, other than the provision that AT&T will pay for 100% of calls delivered to the SBR.

enter commercial agreements; rather, it is advocating a modification of the *rule* to exempt SBRs from the rule's call tracking, audit, certification, and reporting requirements on MCI's and other ICs' say-so.

If SBRs are to be excused from compliance with the rule's safeguards based on an IC's undertaking to assume the tracking and payment functions, then PSPs must be able to rely on the IC to actually make the payments.³ The rule's requirements, adopted to protect PSPs from SBRs' demonstrated propensities for non-compliance with the compensation rule,⁴ must not be waived without ensuring that PSPs' rights to be fairly compensated are protected by alternative means.

MCI claims, without support, that if ICs who agree to assume tracking and payment functions for SBRs are actually required to compensate PSPs, ICs "will have little incentive" to enter payment agreements with SBRs. *MCI's Alternative Arrangements Ex Parte* at 2. The record shows the opposite. AT&T has already agreed to the conditions proposed by APCC.

Indeed, MCI itself has previously explicitly told the Commission it is willing to accept a payment requirement when SBRs opt out of compliance with the rule's safeguards. As MCI said in an ex parte presentation:

[ICs] Should Remain Liable For Payphone Compensation For SBRs
For Whom They Surcharge On The Basis Of Their Answer
Supervision Messages.⁵

³ MCI also tries to shift the focus back to preserving the Commission's "clear finding that Completing Carriers are responsible for their own payphone compensation." *MCI's Alternative Arrangements Ex Parte* at 2. APCC's proposed conditions do not in any way interfere with maintaining SBRs' responsibility to pay compensation when they have not been exempted from the rule. The Commission need only require that, when an IC *says* it will pay the PSP so that a SBR can be exempt from complying with the rule's safeguards, the IC *must actually pay* the PSP until its payment agreement is terminated.

⁴ As APCC has previously explained, the record of this proceeding is replete with evidence of SBR evasion of their payment obligations under the prior rule. *See, e.g.,* Comments of APCC, filed June 23, 2003, Exh. 2 (Declaration of Ruth Jaeger), Exh. 3 (Declaration of Arthur Cooper); Reply Comments of APCC, filed July 3, 2003, Exh. 1 (Declaration of Allan C. Hubbard). That is why, in its adoption of a new SBR-pays rule, the Commission adopted audit, certification, and reporting requirements designed to ensure that SBRs actually took responsibility for implementing their compensation obligations. In the absence of these safeguards, it could not be presumed that SBRs would comply with their payment obligations.

⁵ *See* MCI's ex parte submission entitled "Third Party Verification Procedures As A Condition For SBR Compensation Of Payphone Service Providers," filed August 19, 2003, at 21.

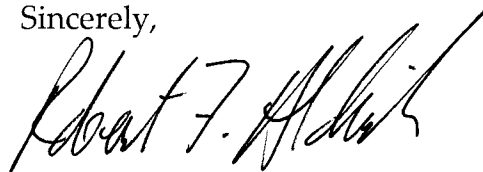
In that submission, MCI correctly contended that ICs should be liable to pay PSPs because:

If [ICs] were not liable in this case, they would be under no compulsion to compensate PSPs if such an SBR refused to pay its surcharges, and would have no incentive to collect the surcharge."

Id.

The issue here is the Commission's enforcement of PSPs' right to compensation, not the specific terms of carriers' commercial agreements. The Commission's rule should specify carrier obligations, and APCC has proposed a rule modification to vindicate PSPs' rights to compensation – not to dictate the terms of ICs' contracts with SBRs. The Commission should adopt APCC's proposed conditions.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert F. Aldrich". The signature is fluid and cursive, with the first name "Robert" and last name "Aldrich" clearly distinguishable.

Albert H. Kramer
Robert F. Aldrich

cc (by e-mail and hand delivery):

Chris Libertelli
Dan Gonzalez
Matthew Brill
Jessica Rosenworcel
Scott Bergmann
Jeffrey Carlisle
Bill Dever
Darryl Cooper
Denise Coca